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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,537	01/21/2004	David W. Brown	P214419	3298

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SCHACHT LAW OFFICE, INC.
SUITE 202
2801 MERIDIAN STREET
BELLINGHAM, WA 98225-2412

EXAMINER

CABRERA, ZOILA E

ART UNIT	PAPER NUMBER
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2125

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/761,537	BROWN ET AL.	
	Examiner	Art Unit	
	Zoila E. Cabrera	2125	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-73,86-97,122-128,130-132,148-174 and 183-190 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-73,86-97,122-128,130-132,148-174 and 183-190 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Final Rejection

1. Claims 18-73, 86-97, 122-128, 130-132, 148-174, and 183-190 are presented for consideration.

The rejections with respect to claims 18-73, 86-97, 122-128, 130-132, 148-174, and 183-190 is maintained.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 18, 26, 35, 49, 62 and 86 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,941,543. Although the conflicting claims are not identical, they are not patentably distinct from each other because the organizational elements in both claims and their functionality are merely obvious variations of each other. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to realize that the limitations of claims 18, 26, 35, 49, 62 and 86 are already included in U.S. Patent No. 6,941,543, as such they are an obvious variation of the invention, defined in the claims 1-16 of Patent No. 6,941,543.

Claims 18, 26, 35, 49, 62 and 86 are rejected under the judicially created doctrine of double patenting over the following U.S. Patents:

6,513,058; 5,867,385; 6,516,236; and 5,691,897

since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. A quick review of the listed documents has shown possible obviousness double patenting issues, however, a complete analysis has not been performed due to the number of patents and applications and the undue burden to the examiner to perform these comparisons. The patents and applications have a common assignee, at least one common inventor and common subject matter. The applicant is instructed to provide either terminal disclaimers for the listed documents or provide an explanation as to how the present invention claims specifically read over the claims and coverage of the listed documents.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 18-73, 86-97, 122-128, 130-132, 148-174, and 183-190 are rejected under 35 U.S.C. 102(e) as being anticipated by **Tanaka (US 2002/0044297 A1)**.

As for claim 18, Tanaka discloses a system for commanding at least one motion control device (Fig. 2), comprising:

A set of motion operations ([0034]-[0042], i.e., for each print command the printer has to move or actuate the corresponding tools to perform a dot drawing, circle drawing, linear-drawing, etc.);

A set of software drivers, where at least one software driver is selectable and associated with at least one motion control device ([0035]-[0042], driver commands); and a software system for selecting at least one selectable software driver from the set of software drivers (Fig. 2, Graphics Engine corresponds to the software system; [0052], a printer driver 3 converts the printer driver command from the graphics engine 2 into a printer command and supplies this command to a printer 4. Please note that the driver command is selected by the graphics engine) and calling a set of component function

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calls to command at least one motion control device associated with the at least one selectable software driver based on the at least one selected software driver such that at least one motion control device performs at least one motion operation ([0006]; [0023], i.e. a figure drawing function is called by the graphics engine to command the printer or motion control device which is associated with the printer driver in order to print a dot drawing,, circle drawing, etc.; [0051-[0052]; [0058]).

As for claim 26, the same citations applied to claim 18 above apply as well for this claim. Regarding the limitations of “an application program comprising a set of component function calls that is capable of directing at least one motion control device to perform at least one motion operation (Fig. 2, Graphics engine). Furthermore, please note that the commanding is based on both the printer driver and drawing function called by the graphics engine (Fig. 6).

As or claim 35, the same citations applied to claims 18 and 26 above apply as well for this claim.

As for claim 49, 62, 86 the same citations applied to claims 18 and 26 above apply as well for these claims. Please note that instead of commanding the limitation “communicating” is claimed which inherently reads on commanding.

As for claims 19-25, Tanaka further discloses:

19. A user interface that allows a user to select the at least one selectable software driver (Fig. 1; Display device);

20. A system as recited in claim 18, in which the software system comprises a selection interface that allows the at least one selectable software driver to be selected programmatically (Fig. 6).

21. A system as recited in claim 18, in which at least one motion operation is capable of causing data to be sent to at least one motion control device and at least one motion operation is capable of causing data to be received from at least one motion control device (Fig. 4; command data sent to printer and the received printed output).

22. A system as recited in claim 18, in which at least one motion operation is capable of being used to monitor at least one motion control device and at least one motion operation is capable of causing the motion control device to be configured ([0054]; [0075]).

23. A system as recited in claim 18, in which at least one of the software drivers in the set of software drivers conforms to a common driver interface (Fig. 2, printer driver 3).

24. A system as recited in claim 23, in which the common driver interface comprises a set of component functions that are exposed to the software system by at least one of the software drivers (Fig. 6, i.e., Is printer driver capable of circle Drawing, rectangle drawing, etc.).

25. A system as recited in claim 23, in which the software system communicates with the at least one motion control device through the common driver interface of the software driver associated with the at least one motion control device (Fig. 2).

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Regarding claims 27-34, 36-48, 50-61, 63-73, 87-97, and 122-128, 130-132, 160-162, 167-170, 183-186, the same citations applied to claims 19-25 apply as well for these claims.

As for claims 148-159, 163-166, 171-174, 187-190 please note that a definition of graphics engine or printer driver can be acquired from the operating system or storage of the computer (Fig. 2; [0049]).

Response to Arguments

4. Applicant's arguments filed April 11, 2006 have been fully considered but they are not persuasive.

Applicant contends regarding the Double Patenting Rejection, Pages 1-2, that "the duration of a patent as defined by 35 USC 154(a)(2) renders moot the double-patent rejections". Examiner disagrees because a double patenting rejection also prevents possible harassment by multiple assignees. There are two aspects that cover a Double Patenting Rejection, "improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees".

Regarding the 35 USC 102(e) rejections with respect to claims 18-73, 86-97, 122-128, 130-132, 148-174, 183-190, applicant further contends, on Page 3, that the Tanaka publication may not be considered prior art under 35 USC 102(e) because it was published on April 18, 2002. Examiner disagrees because the effective filing date of the Tanaka publication is the date of the Continuation Application No. 08/086,877 filed on July 7, 1993.

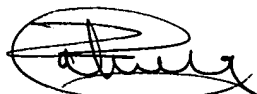
Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning communication or earlier communication from the examiner should be directed to Zoila Cabrera, whose telephone number is (571) 272-3738. The examiner can normally be reached on M-F from 8:00 a.m. to 5:30 p.m. EST (every other Friday).

If attempts to reach the examiner by phone fail, the examiner's supervisor, Leo Picard, can be reached on (571) 272-3749. Additionally, the fax phones for Art Unit 2125 are (571) 273-8300. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist at (703) 305-9600.



Zoila Cabrera
Primary Examiner
6/15/06